

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 9, 2001 at 9:04 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 382, SB 399
Executive Action: None

HEARING ON SB 382

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Jeff Sherlock, District Judge, Helena
Randi Hood, Lewis & Clark City Public Defender
John Connor, Attorney General's Office

Opponents: Al Davis, Mental Health Assoc. of MT

Anita Rossman, Montana Attorney Advocacy Program**Opening Statement by Sponsor:**

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, said this bill deals with petitions for involuntary mental commitments. He explained that a petition could be brought before a judge and if the judge finds probable cause an attorney is appointed and a hearing is then set, but the hearing may not be on the same day as the initial appearance, which is current law. He said that it is inefficient for the hearing to be delayed a day from the perspective of trying to resolve the issue and due to the costs. This bill adds language stating that the hearing "may be on the same day unless with good cause is shown the judge orders the hearing to be set on a subsequent day."

Proponents' Testimony:

Jeff Sherlock, District Judge, Helena, said that he observes this issue quite frequently. He said that with most cases the initial appearance and hearing would be the same day. In 1995 the supreme court said they couldn't do that and the statute as it is currently written, which was passed by the 1997 legislature, said there needs to be a one day waiting period. He said this would be a benefit to have the individual come in from Warm Springs instead of holding them in Lewis & Clark County. He mentioned the budget increases due to hospitalizing these individuals during the waiting period.

Randi Hood, Lewis & Clark City Public Defender, said that the change in this bill offers another opportunity in appropriately handling the client. If a hearing is held, she explained that these individuals are sent to the state hospital, medicated and then within a short period of time their condition improves. By waiting an extra day there is no change in the client, but it isn't any benefit to the clients to be strapped down in the hospital for an extra day. She said that this bill does offer an additional time frame, if needed, for the client to be ready and medicated to come before the court.

John Connor, Attorney General's Office, said that smaller communities do not have the capacity to hold mentally ill people and it becomes a difficulty when transporting them to the court on consecutive days and for some distances just to accommodate this statutory situation.

Opponents' Testimony:

Al Davis, Mental Health Assoc. of MT., said that the Mental Health Association views involuntary commitments as a serious action due to making a judgement of the competency of the individual and then stripping them of their freedoms. He felt that the 24 hour time frame can provide a safe guard for all individuals so that all of the issues that need to be taken into consideration can be dealt with.

Anita Rossman, Montana Attorney Advocacy Program, she handed in her testimony. **EXHIBIT(jus33a01)**

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if the hearings could be heard on closed circuit t.v. so as to not transport the individual. **Jeff Sherlock** said that part of the problem is the technology. This technology is available here in Lewis & Clark County, but most of these people can't be in Warm Springs until they are at the local hospital here in Helena first. It could still be an extra day.

SEN. MIKE HALLIGAN asked if there was any fiscal impact. **SEN. GROSFIELD** said that the Department of Correction and Department of Public Health and Human Services were all consulted if this bill would be costly. He said the amount of commitments mentioned in this bill do not seem to be a huge number due to a one day. He explained the costs of holding a client in the hospital an extra day and who pays for that costs.

SEN. HALLIGAN asked what percentage of these cases would go to Warm Springs. **Randi Hood** estimated that currently around 15 - 20% are not held at the hospital or Warm Springs. She said that a third could possibly be done on one day.

SEN. HALLIGAN asked if it is more damaging to a mentally ill individual to be held an extra day. **Anita Rossman** said that if this bill was rewritten, it would be incumbent on the person seeking to have the initial hearing and the commitment hearing held on the same day to prove why there is good cause that it should be.

SEN. DUANE GRIMES asked if the sponsor would be able to add some basic language to this bill to include the extreme cases. **SEN. GROSFIELD** said that this issue deals with a serious problem of taking their rights away and he didn't think that there were a few extreme cases. This bill could be structured differently, but they would need to be careful in rewording.

{Tape 1; Side B}

SEN. GRIMES asked if additional language would be necessary to be appropriate. **Jeff Sherlock** said that the way the bill is written now there is a default for the one day hearing and it might be appropriate to have the default read "for good cause shown to have it the same day as well as two days".

SEN. GRIMES asked what good cause would imply. **Jeff Sherlock** said that at times they need to have the person stabilized in order to have a hearing and that is what good cause would mean in this situation.

Closing by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, summarized that this issue is very serious and he asked for the committee to be sensitive with this bill during executive action.

HEARING ON SB 399

Sponsor: **SEN. RIC HOLDEN, SD 1, GLENDIVE**

Proponents: **Karolyn MacKenzie, Memphis TN.**
 Julie Millam, Christian Coalition of Montana
 Dallas Erickson, Montana Citizens for Decency
 Through Law
 Harris Himes, Attorney, Hamilton
 Pastor Hollis Poe, Bitterroot Valley
 Becky Walden, Self
 Dr. William DeWise, Internal Medicine
 Lisa Lovell, Self
 Jeannie Poe, Wife of Pastor Poe
 Shannon Bennett, Hamilton
 David Carter, Livingston
 Tony Ballew, Livingston

Opponents: **Jacqueline Lenmark, Montana Coalition of Privacy**
 Brian Heeney, Pharmacist, Helena
 Doug Aita, Video Software Dealers Association
 Dan Bruins, Adult Bookstore Owner, Great Falls
 Melvin Batey, Self
 Stuart Doggett, Montana Innkeepers
 Beth Brenneman, ACLU of Montana
 Gilbert Millegan, Manager Showcase Video, Missoula

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, GLENDIVE, handed in his testimony.
EXHIBIT(jus33a02).

Proponents' Testimony:

Karolyn MacKenzie, Memphis TN., explained how adult bookstores are exploiting sex with booths for dancers and sexually charged men come into these bookstores to watch the dancers perform. She pointed out the unhealthiness of the sexuality that is going on in these establishments.

Julie Millam, Christian Coalition of Montana, explained the health standards she upheld as a licensed manicurist and how these sexually orientated businesses should have enforcement of health standards. **EXHIBIT(jus33a03)** She handed in information of an activity report.

Dallas Erickson, Montana Citizens for Decency Through Law, handed in his testimony **EXHIBIT(jus33a04)**. He handed out information regarding citation and notification of penalties **EXHIBIT(jus33a05)**. He handed out a copy of a letter from the U.S. Department of Labor **EXHIBIT(jus33a06)**. He handed out a guide to the problems of sexually oriented businesses **EXHIBIT(jus33a07)**.

Harris Himes, Attorney, Hamilton, explained the conduct issues and how they conflict with the Montana Right to Privacy. He felt that the issues dealing with the spread of sexually transmitted diseases and the sexual crimes that effect communities from these businesses should be investigated further.

Pastor Hollis Poe, Bitterroot Valley, said that he went into these sexually oriented businesses with **Karolyn MacKenzie** to investigate the filth and he asked the committee to visit these bookstores and businesses and see for themselves the unhealthy standards. He said there is a need for disinfectant materials to be used in these businesses.

Becky Walden read a letter from Karyn Shadow, an ex-dancer of one of these businesses **EXHIBIT(jus33a08)**.

Dr. William DeWise, Internal Medicine, mentioned the sexually transmitted diseases that are common and he was appalled at the fact of restaurants being closed due to health standards and how these sexually oriented businesses seem to keep operating. He explained how sexually transmitted diseases can go undetected for a long period of time and these diseases could be transferred to another person through bodily fluids.

{Tape 2; Side A}

Lisa Lovell handed in a witness statement **EXHIBIT(jus33a09)**.

Jeannie Poe, Wife of Pastor Poe, talked about her ex-husband, who became involved with sexual oriented businesses. She feels healed now over being married to someone who was addicted to sexual magazines and visiting these bookstores to watch dancers and strippers. She handed out reports from the Los Angeles Police Department **EXHIBIT(jus33a10)**.

Shannon Bennett, Hamilton, handed in her testimony **EXHIBIT(jus33a11)**. She also handed out information from the National Law Center for Children and Families **EXHIBIT(jus33a12)**.

David Carter, Livingston, handed out a memo from the Livingston City Attorney **EXHIBIT(jus33a13)**. He stated that Montana should have a state law that as a community they could use for a guideline.

Tony Ballew, Livingston, handed out a testimony from Joe and Lee Parriott **EXHIBIT(jus33a14)**. He mentioned his first-hand experiences with these types of businesses, when one was being operated in Livingston, MT. He urged the committee's support of this bill due to the uncleanliness of these businesses.

Opponents' Testimony:

Jacqueline Lenmark, Montana Coalition of Privacy, handed out a memo **EXHIBIT(jus33a15)**. She also handed out three letters **EXHIBIT(jus33a16)**, **EXHIBIT(jus33a17)**, **EXHIBIT(jus33a18)**. She also handed out information regarding video software dealers **EXHIBIT(jus33a19)**. She said that this bill casts a broad net dealing with other businesses, such as video retailers, who may have x-rated rentals in their family-style businesses. She stated that this bill would draw the Department of Health into a complex regulatory scheme that is not developed and this bill would not take care of the uncleanliness of these businesses.

She explained definitions of bookstores and video stores by taking out the language "adult" and pointed out how these definitions would affect other businesses i.e. spas, massage parlors, pharmacies. She said that this bill contains details on where these certain businesses must be located and this amounts to a statewide zoning law. She said there needs to be a fiscal note with this bill since it can be costly to communities that are involved with sexual oriented businesses.

Brian Heeney, Pharmacist, Helena, brought forth health issues of major concern to pharmacies. He pointed out the definitions of an adult bookstore or an adult video store and how these would coincide with pharmacies. Within pharmacies products are available for health reasons and prevention, and by the nature of this bill, the health care profession is included. He didn't want manipulation of the profession to enter this bill if it were to become law.

{Tape 2; Side B}

Doug Aita, Video Software Dealers Association, handed in his testimony **EXHIBIT(jus33a20)**.

Dan Bruins, Adult Bookstore Owner, Great Falls, said he does not agree with this bill due to the licensing and taxes that would be involved. He has the health department involved with his store to help with cleanliness. He also offers free condoms to customers and offers information regarding sexually transmitted diseases. He pointed out that he supports local events to show that his bookstore is part of the community.

Melvin Batey said that he is a member of a nudist club in Montana and he explained how nudity helps the physical health and well-being of a person. He pointed out the activities of his group would be in violation if this bill were to be passed.

Stuart Doggett, Montana Innkeepers, talked about the service of hotels and motels and that they should not be transcribed as a sexually oriented business. He was concerned at how this would be proposed. He pointed out obtaining licenses for businesses and how this would affect innkeepers.

Beth Brennemen, ACLU of Montana, mentioned the regulations for public nudity and she pointed out that this topic was not stated from any of the proponents. She explained the definitions of semi-nude and that only women can be semi-nude under this bill. One of the problems with this bill includes state ordinances and it is imposed upon by local zoning jurisdictions.

Gilbert Millegan, Manager Showcase Video, Missoula, explained that his store is a family oriented store, which carries a limited amount of adult product. He said that there is a separate room, which is very discreet and is not emphasized, for these x-rated videos to be rented and customers are carded before entering. He worries about the zoning policies that would be inflicted if this bill were to pass and that his store that he has owned and managed for over 15 years would be affected.

Questions from Committee Members and Responses:

SEN. GRIMES asked who the bill was intended for. **SEN. HOLDEN** said there is not an intention to address the medical and church professions.

SEN. GRIMES asked what the definitions of this bill contain and if this bill has unintended applications. **Dallas Erickson** said that this bill is crafted after laws in other states. He added that there are exemptions for family video stores containing rated videos other than x-rated.

{Tape 3; Side A}

SEN. AL BISHOP asked if this bill would affect the local businesses that sell books containing adult content, because the language in this bill could affect materials that Wal-Mart or Target sell. **SEN. HOLDEN** said that the committee would have to discuss this issue during executive action.

CHAIRMAN GROSFIELD asked what type of licensing is currently in place. **Kathleen Martin, Supervisor of Communicable Disease Control Department of Health and Human Services**, said there are not mentions of the licensing departments in this bill other than the licensure for hotels and motels, which is not related to the activities described in this bill, but related to the public impact that might occur in hotels and motels.

CHAIRMAN GROSFIELD asked if the fees involved would be adequate to cover the department's obligations within this bill. **Kathleen Martin** said that she did assist in drafting the fiscal note for this bill and the bill does call for expertise in areas that the department does not have pertaining to building codes, zoning and auditing. **Terry Petersen, Investigator for Department of Health and Human Services**, described investigations that take place for D.P.H.H.S. and how he has visited these sexually oriented businesses. He explained the lack of use of gloves and disinfectants that should be used in these businesses.

CHAIRMAN GROSFIELD asked what the department's authority is when they find problems in these businesses, are there fines involved. **Terry Petersen** said currently they encourage the owner use cleanliness and if there were a lot of diseases found in a business it would be brought to the county attorney and county health officer.

SEN. GRIMES asked how many establishments could potentially be described as sexually oriented businesses in Montana. **Terry Petersen** answered approximately 200.

SEN. GRIMES asked if sexually transmitted diseases are being transmitted primarily from these businesses. **Terry Petersen** said that they have never had a cluster of diseases come from one of these businesses, but there is the potential that it could happen.

SEN. GRIMES asked if oral or anal sex would produce a higher level of risk. **Terry Petersen** answered yes it would.

SEN. HALLIGAN asked what language in this bill is beyond or similar to what other states may have done. **Dallas Erickson** said that this bill was drafted by an organization that works in the nation on these bills. He was not sure what may be exactly the same or different in this bill with other states.

SEN. HALLIGAN asked if this bill was drafted after an issue that was unconstitutional and happened in Ravalli County. **Harris Himes** said this bill is not drafted precisely like any other bills. He added that these are content neutral emphasizing locations and effects.

SEN. HALLIGAN asked where these cases are concerning the Montana Constitution or whether the local counties have authority to pursue these matters. **Beth Brenneman** said that the issue of local control is very good and ordinances have been found unconstitutional. She pointed out exemptions for protected activity in Section 33 of this bill and that it is not restated.

SEN. HALLIGAN asked if local jurisdictions could deal with this issue on their own. **SEN. HOLDEN** said the type of content that is in these businesses could be difficult to deal with in a local setting.

CHAIRMAN GROSFIELD asked what the impact of this bill would have on nudist clubs and would it limit activities. **Dallas Erickson** said no, it should not apply to these clubs.

SEN. GRIMES asked if the activity in this bill describes oversight or regulation. **Beth Brenneman** said that the activity described in this bill is criminal, pertaining to prostitution. She said that the problems in this bill are indicative of regulations and this bill reflects that women's bodies are deemed to be inherently sexual objects.

SEN. GRIMES asked if underage youth have been allowed into these establishments and is it a violation of current law. **Beth Brenneman** said that she would have to look at a code book for this issue.

CHAIRMAN GROSFIELD asked if within the Section 33 the explanations of rated movies would assist the Video Dealers Association. **Doug Aita** said no, this would not assist the association. He said he had submitted a brief from their legal counsel because this provision in the bill is in violation of Montana Constitution.

CHAIRMAN GROSFIELD asked where the fiscal note may be and if it will be applied to this bill. **SEN. HOLDEN** said that he had not heard if the drafting of the fiscal note had been finished.

CHAIRMAN GROSFIELD asked if it were possible to adjust this bill, would it change your group's position on this bill. **Jacqueline Lenmark** thought that it would not because she didn't think it possible for a bill to be drafted narrowly enough or it wouldn't be necessary. She said if this bill was attempted to be drafted it would not target the approach by the proponents. Law enforcement, education and certain organizations need to be strengthened for businesses to not take the approach of certain regulations.

Closing by Sponsor:

SEN. RIC HOLDEN, SD 1, GLENDIVE, pointed out the needs of this bill and expressed how the proponents were in support due to health issues that occur in these businesses. He felt that these adult bookstores breathe sex crimes and they do not belong within Montana communities.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus33aad)